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IT IS SO ORDERED.



Beth A. Buchanan

Beth A. Buchanan
United States Bankruptcy Judge

Dated: September 27, 2011

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In Re

CHRIS FRAZEE

ROBERTA FRAZEE

Debtors

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Case No. 11-12442

Chapter 13

Judge Buchanan

ORDER REGARDING CONFIRMATION OF CHAPTER 13 PLAN

This matter is before this Court on the Debtors' proposed *Chapter 13 Plan* [Docket Number 6] (the "Proposed Plan"). A hearing was held on July 19, 2011. Counsel for the Debtor and the Chapter 13 Trustee appeared at the hearing.

This Court, *sua sponte*, set confirmation of the Debtor's Proposed Plan for hearing because of language found in Paragraph 30 of the Proposed Plan. Specifically, this Court requested counsel to explain the necessity and legal implications of the following provisions:

B. Unsecured Creditors, who have been duly scheduled in this case but fail to file a proof of claim by the deadline for filing such a claim, shall be deemed to have their claims satisfied in full and the claims shall be discharged up to the issuance of a Discharge Order in this Case. Furthermore, Creditors who are paid by Co-Debtors outside the Plan, including debts of a kind described in 11 U.S.C. § 1322(b)(5), shall be discharged as to the Debtors upon the issuance of a Discharge Order in this case.

As to the first sentence of Paragraph 30B of the Proposed Plan, Counsel for the Debtor acknowledged that language restating what the Bankruptcy Code¹ already provides is unnecessary and advised that Counsel is no longer including this language in the plans he files with this Court. Based on this representation and to avoid ambiguity and uncertainty with regard to whether something more or less than what the Bankruptcy Code allows was intended, the first sentence of Paragraph 30B of the Proposed Plan is STRICKEN. *See, In re Carlton*, 437 B.R. 412, 419 (Bankr. N.D. Ala. 2010) (“[If the proposed plan provision at issue] is an accurate statement of law, then it is unnecessary. If it is not an accurate statement of law, then it violates the implied statutory prohibition against including any provision that is not consistent with the Bankruptcy Code. *See 11 U.S.C. § 1322(b)(11)*. . . . As such it must be deleted from the plan before it may be confirmed.” (quotes and citations omitted)).

As to the second sentence of Paragraph 30B of the Proposed Plan, the troubling language for this Court is the reference to discharge of debts of a kind described in Section 1322(b)(5) of the Bankruptcy Code. Section 1328 of the Bankruptcy Code excepts from discharge any debt provided for by Section 1322(b)(5) of the Bankruptcy Code. *See 11 U.S.C. §§ 1328(a)(1) and (c)(1)*. By including this language in the Proposed Plan, it appeared to this Court that the Debtor was attempting to discharge a non-dischargeable debt.

Counsel for the Debtors explained that the genesis of this language came from a case where the debtor proposed to surrender certain real property to a creditor and the creditor and a co-debtor made arrangements for the mortgage debt to be paid outside of the plan by the co-debtor. Counsel explained that the Paragraph 30B type language was intended to clarify that the debtor would be discharged from the mortgage debt at the conclusion of the debtor’s plan notwithstanding that the creditor would continue to be paid by the co-debtor after the last payment was due under the debtor’s plan.

It is not necessary for this Court to address whether the Paragraph 30B type language cures the ill that Counsel was trying to address under the foregoing factual situation since these are not the facts currently before this Court. Rather, in this case, there are no Section 1322(b)(5) type debts provided for under the Proposed Plan that are being paid by a co-debtor outside of the Proposed Plan so this language is not needed. Moreover, the determination of whether a debt is discharged as to the debtor where the claim is paid by a co-debtors outside of the Proposed Plan is determined by the applicable provisions of the Bankruptcy Code based on the nature of the underlying the claim. Including standardized sweeping provisions of this nature in a plan enhances the opportunity for confusion and fosters litigation.² *See, e.g., In re Carlton*, 437 B.R. at 419. Accordingly, the second sentence of Paragraph 30B of the Proposed Plan is likewise STRICKEN.

There being no other objections to confirmation, and given that the Chapter 13 Trustee recommends this case for confirmation, this Court will entertain a confirmation order to be

¹ References to the “Bankruptcy Code” are to *11 U.S.C. § 101 et seq.*

² Counsel also agreed at the hearing that the following provision in Paragraph 25 of the Proposed Plan is stricken since this Court found the relief requested as to co-signers, co-makers and guarantors to be beyond the scope of relief provided by the Bankruptcy Code: “*See Schedule H. Payment of the amount specified in the proof of claim shall constitute full payment of the debt as to the debtor(s) and any co-signer, co-maker or guarantor.*”

tendered by the Chapter 13 Trustee's office. This order is hereby incorporated into the confirmation order.

SO ORDERED.

Distribution list:

All creditors and parties in interest.

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